

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LAUREL COUNTY BOARD OF EDUCATION)	
)	
COMPLAINANT)	
vs.)	CASE NO. 96-144
)	
GTE SOUTH INCORPORATED)	
)	
DEFENDANT)	

O R D E R

On December 5, 1996, the Commission issued its Order dismissing the petition of the Laurel County Board of Education (the "Board") wherein the Board had requested the Commission to require GTE South Incorporated ("GTE South") to permit the Board to use GTE South poles to install a fiber optic communications system. The Commission found that it has jurisdiction over the dispute, since service arising from use of utility poles has been found to be a utility service by the Kentucky Court of Appeals. Kentucky CATV Ass'n v. Volz, Ky. App., 675 S.W.2d 393, 396 (1983). The Commission also found that economical provision of telecommunications services to public schools is in the public interest. However, the Commission concluded that the poles constitute a finite resource which may be used by many entities -- e.g., by nonprofit medical facilities and colleges -- in many ways that would benefit the public interest. Consequently the Commission concluded that determination of so important an issue would be inappropriate in a case involving only one local exchange carrier and one local school

board. The issues are more appropriately treated in a broad proceeding wherein other affected parties will have an opportunity to comment. On December 23, 1996, the Board, pursuant to KRS 278.400, filed a motion requesting rehearing (the "Motion").

As grounds for its motion, the Board states that the December 5, 1996 Order is "inconsistent" and "incorrect." The Order is inconsistent, the Board claims, because the Commission found that it has jurisdiction and then decided that "the issues are too broad and far-reaching for the Commonwealth for it to act."¹ The Commission discerns no inconsistency here. The Commission did not in fact state that it refuses to act on this issue. The Commission will indeed act on this issue, and it will do so in Administrative Case No. 360,² in which the Board is invited to participate.

The Board also argues that Kentucky school boards should automatically be given priority over other entities which operate in the public interest because their purpose is to educate the children of this Commonwealth.³ The Commission may reach this same conclusion in Administrative Case No. 360. However, it declines the Board's invitation to rule on the potential merits of the claims of other public interest institutions when those institutions have not been afforded an opportunity to speak in their own behalf. The argument regarding priorities in pole use is an excellent illustration of the reason the Commission concluded that an administrative proceeding is the only appropriate vehicle to make broad policy decisions such as the one presented here.

¹ Motion at 3.

² Administrative Case No. 360, An Inquiry into Universal Service and Funding Issues.

³ Motion at 4.

Finally, the Board asserts the Commission was "incorrect" in asserting that the case should be dismissed "because it involves only one school board and 'one local exchange carrier.'"⁴ GTE South, the Board states, is a "huge corporation."⁵ The Commission does not believe that the size of GTE South renders "incorrect" or irrelevant its characterization of this case as involving only one local exchange carrier. Because other local exchange carriers are not parties to this case, they, like the entities discussed infra, would be deprived of an opportunity to be heard on an issue which directly concerns their interests if the Commission reached, in the context of this case, the conclusion urged by the Board.

For the reasons discussed herein, the Commission HEREBY ORDERS that the Board's petition for rehearing is denied.

Done at Frankfort, Kentucky, this 9th day of January, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

⁴ Motion at 3, quoting Order of December 5, 1996, at 3.

⁵ Id.